

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION, CINCINNATI

EVERETT W. WHISMAN, et al., :
Plaintiffs :
-v- : Case No. C-1-02-406
: (Judge Beckwith)
: (Magistrate Sherman)
ZF BATAVIA, LLC, et al., :
Defendants :

- 0 -

The deposition of **MARTIN R. ROBBINS**, taken before Susan K. Lee, CVR-CM, Court Reporter and Notary Public in and for the State of Ohio, at the Holiday Inn Eastgate, 4501 Eastgate Boulevard, Cincinnati, Ohio, on the 3rd day of October, 2003, beginning at the hour of 10:57 a.m. and ending at 11:22 a.m. of the same date.

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ALSO PRESENT: MR. EVERETT W. WHISMAN
MR. GARY VORIES
MR. HERBERT HUEBNER

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STIPULATIONS:

It is stipulated by and between counsel for the respective parties that the deposition of **MARTIN R. ROBBINS**, a witness herein, may be taken at this time pursuant to the Federal Rules of Civil Procedure and Notice; that the deposition may be taken via Stenomask by the Notary Public/Court Reporter, and transcribed by her out of the presence of witness; that the deposition was submitted to counsel for the witness for reading and signature.

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1 **MARTIN R. ROBBINS**, called as a witness, being first
2 duly sworn, testified as follows:

3 BY MR. SIMON:

4 Q Sir, if you would, state your full name
5 for the record.

6 A Martin Ray Robbins.

7 Q And, sir, who is your current employer?

8 A ZF Batavia.

9 Q How long have you been with ZF Batavia?

10 A It will be four years December.

11 Q And did you work for Ford in the
12 Batavia plant prior to that?

13 A Yes.

14 Q How long did you work with Ford?

15 A I started the day after Labor Day in
16 '79.

17 Q And you're a salaried employee now,
18 correct?

19 A Yes.

20 Q And what is your position?

21 A Manager, safety and security.

22 Q How long have you held that position?

23 A Almost four years. Yeah, right around
24 there.

25 Q Have you held that position since you

1 joined ZF Batavia?

2 A No.

3 Q How long was the period where you
4 worked with ZF Batavia and didn't hold that position?

5 A I started with ZF -- or I started at
6 Ford rather?

7 Q No.

8 A Is that the question?

9 Q No. We're staying with ZF Batavia.
10 You started with ZF Batavia in 1999, correct?

11 A Right.

12 Q And how soon after you joined did you
13 become manager of safety and security?

14 A Well, I was.

15 Q What are your duties as manager of
16 safety and security?

17 A God, sometimes you name it, I have it.
18 I've got responsibility for overall safety of the
19 plant. I have two safety engineers report to me, eight
20 security guards report to me, fire protection officer
21 reports to me, responsibility for the cafeteria,
22 janitorial services, communications.

23 Q That's all right. I'm sure there's
24 probably other things you're forgetting, but that's
25 okay.

1 A Well, I mean, safety and security, I
2 mean, I think that speaks for itself. It's pretty
3 broad, you know.

4 Q Sure. Let's start with this. Exhibit
5 16 is a document we have introduced in this case in
6 prior depositions and it's sitting before you. Have
7 you seen that document before?

8 A Yes.

9 Q What is that document?

10 A Well, it's telling us basically that
11 we've got to ring in and out.

12 Q As a salaried employee, right?

13 A Mm-hmm.

14 Q Yes?

15 A Yes.

16 Q I didn't give you -- have you ever had
17 your deposition taken before?

18 A A very long time ago.

19 MR. SIMON: All right. Just for review
20 then, you're just answering your questions
21 under oath. And if you don't understand a
22 question that I ask, Mr. Robbins, will you just
23 ask me to rephrase the question or re-ask it?
24 Because otherwise when the court reporter
25 produces the transcript, you're going to see a

1 question and answer and it's going to look like
2 you understand it.

3 THE WITNESS: Okay.

4 MR. SIMON: So can we agree that if you
5 don't understand my question, you'll ask me to
6 re-ask it?

7 THE WITNESS: That's fine.

8 MR. SIMON: All right. And just make
9 sure your answers are audible.

10 THE WITNESS: Okay.

11 MR. SIMON: A nod of the head won't
12 work for the court reporter.

13 THE WITNESS: I understand.

14 BY MR. SIMON:

15 Q That date on that notice is August
16 29th, 2001. Do you see that at the top?

17 A Yeah.

18 Q And so in the last two years then when
19 you've entered the plant, you've had to engage the
20 reader with a card as you enter and engage the reader
21 when you exit the plant, correct?

22 A That's right.

23 Q And that's true for all the salaried
24 employees, right?

25 A Yes, it is.

1 Q Do you see under where it says notice
2 it lists categories of employees? Do you see that? Do
3 you see where it says notice at the top of the page?

4 A Yeah.

5 Q And then it says "All ZFBA salaried
6 employees..." --

7 A "...Ford salaried and contract..." --
8 yeah.

9 Q So there's a group of employees who
10 still work for Ford that are salaried, right?

11 A A few.

12 Q And so it's your understanding that
13 those people have to swipe in and swipe out when they
14 exit and enter the building, right?

15 A Yes.

16 Q And that's also true of contract
17 employees?

18 A Yeah. As -- you know, as this states,
19 employees with salaried responsibilities.

20 Q I think, as an example, Gerry Priest
21 said he's a contract employee.

22 A He is now.

23 Q So he has to swipe in and swipe out,
24 right?

25 A Mm-hmm.

1 Q Yes?

2 A Yes.

3 Q When I say swipe in and swipe out, is
4 that the terminology you use when you're talking about
5 the card?

6 A Most people do use the word swipe. I
7 don't really like it, being head of security but --

8 Q That's a very good point. You've heard
9 of the -- let's see if I've got this right -- group
10 card trail report?

11 A Excuse me?

12 Q Have you heard of a trail report?

13 A Explain what you're saying.

14 Q All right. We just had Jeff Howard
15 testifying a moment ago. Do the security guards like
16 Jeff or people in his position periodically have to run
17 reports that are a readout -- excuse me. The reports
18 are --

19 A Okay. I know what you're saying now.
20 Yeah. Upon request, yeah.

21 Q And just to finish the thought, what
22 are the reports called?

23 A I just call it a -- just, you know, a
24 run report of different employees. I mean, I don't
25 have a trail name on it. I mean, it's just a report of

1 different persons or a person.

2 Q And the report is, it will show --
3 based on when the person engaged the reader coming out
4 of the plant, it will have a list of times when they
5 exited and entered the plant on given dates, right?

6 A Yes. And other areas, too.

7 Q Other areas where you have to engage
8 the reader?

9 A Mm-hmm.

10 Q That's a yes?

11 A Yes.

12 Q All right. Now, I understand there's
13 situations -- and there might be a change in this
14 policy, but a salaried person, if they want, can call
15 perhaps a security guard and say "Hey, can you run the
16 report on the last couple weeks to see when I came in
17 and out of the building?" Has that been the practice?

18 A Yeah, that's been the practice. In
19 fact, I just found out a couple days ago there's a
20 number of salaried employees that have been doing that
21 and I don't know why, only because they don't want to
22 fill out their time card on a daily basis, I would take
23 it. You know, I don't know why they just can't
24 document the times. It's not that difficult.

25 Q Putting aside those kind of requests

1 from salaried employees about their own times they came
2 in, have there been other instances where you
3 periodically, based on a request from human resources
4 or a particular manager or supervisor, where you're
5 asked to have your department run a report for a
6 salaried employee so someone can check their times
7 against their time sheets?

8 A I don't know about checking about their
9 time sheets and all, but, yeah, I've been requested to
10 give the security reports, trail reports, whatever you
11 want to call them.

12 Q Who makes these requests?

13 A Section supervisors in engineering, HR
14 has requested them. But most of the time it's the, you
15 know, section supervisor in engineering or quite
16 possibly a production manager. That hasn't happened
17 very frequently at all.

18 Q Do they explain to you what the basis
19 for their request is?

20 A No. I mean, the persons I'm talking
21 about in engineering it was like every six months
22 they'll go ahead and request that documentation, just
23 to go ahead and -- you know, just to make -- just to
24 make a check really.

25 Q To check that the engineers are in the

1 plant when they say they are?

2 A You would have to ask them that.

3 Q No one has ever told you why they do
4 the six-month periodical report?

5 A Just for -- have they told me
6 specifically? No. I mean, they've requested that I
7 give times, in and outs, for the people that work for
8 them.

9 Q Well, the people in engineering, have
10 they given you any --

11 A I'm sure it's for verification. But,
12 you know, have they said verification? No.

13 Q When you say verification, what do you
14 -- by the way, I've done this a couple times, but if
15 you can wait for me to finish my question --

16 A All right.

17 Q -- before you answer --

18 A Sorry.

19 Q That's okay. It's very common. What
20 do you mean by verification?

21 A Verification of the times in and out
22 probably going with their time cards.

23 Q So even though they haven't told you
24 specifically, you understood that the requests from
25 engineering are so someone in engineering can take

1 someone's readout from the Honeywell reader, that
2 report, and compare it to time sheets; that's your
3 understanding?

4 A That's my understanding.

5 Q Engineering, I think you said that they
6 do this periodically. But you also get requests on an
7 individual basis from other managers who say "I want
8 this for a specific employee," correct?

9 A Ninety-five percent of the time it's on
10 an hourly person, and we make them probably 90 percent
11 of the time go through labor relations.

12 Q But you do get those requests for
13 salaried employees as well?

14 A Not very frequently, but yes.

15 Q You've been requested to do that for
16 Sandy Moore, correct?

17 A No.

18 Q You don't recall anyone asking for the
19 trail report for Ms. Moore?

20 A Sandy Moore, hell, when she was there
21 -- she was there, that was back in 1999. That's before
22 we had the Honeywell reader.

23 Q What about Renard South?

24 A Same time period.

25 Q Mr. South was just there in 1999?

1 A I don't think he was there starting in
2 October of 2001. I don't think he was. I don't know.

3 Q As you sit here today, are you saying
4 with certainty you never authorized that that report be
5 issued on Mr. South or are you saying you don't
6 remember?

7 A I don't remember.

8 Q And if somebody said that "Yeah, I ran
9 a report on Mr. South in the last four years at the
10 request of apparently his supervisor that was relayed
11 through Mr. Robbins or human resources," you wouldn't
12 --

13 A I'm telling you I don't remember.

14 Q Okay. You wouldn't dispute it if
15 somebody said that is what I was saying.

16 A Clarify that, please.

17 Q If someone said that that happened,
18 that they ran a report on Mr. South, you wouldn't
19 dispute it? You would just say "I don't remember," is
20 that correct?

21 A Yes, I would say I don't remember.

22 Q What about Victor Flanagan?

23 A I can't recall Victor Flanagan.

24 Q Dave Osborne?

25 A I don't recall anybody -- I know Dave

1 obviously, but I don't recall somebody requesting that
2 information.

3 Q Can you remember any specific salaried
4 employee about whom another supervisor asked that the
5 trail report be run on them? Can you remember a
6 specific person?

7 A Karl Kontyko.

8 Q Was that request made by Ray Pugliese?

9 A Yes.

10 Q Has Mr. Pugliese made that request
11 several times?

12 A Several times.

13 Q And has Mr. Pugliese explained that he
14 wants those reports so he can see where Karl is?

15 A He never used those words.

16 Q Did he explain to you why he wanted the
17 reports?

18 A Yes.

19 Q What did he say?

20 A Verbatim, I cannot recall. Okay? But
21 it was to go ahead and verify his time.

22 Q And, again, you understood that to mean
23 that Mr. Pugliese wanted to take the report from the
24 Honeywell reader and compare it to Mr. Kontyko's time
25 sheets?

1 A I would make that assumption.

2 Q Did you have any reason to believe that
3 he wanted to do it for any other reason?

4 A No, sir.

5 Q How many times has Mr. Pugliese made
6 that request?

7 A I don't know how many times. Eight to
8 12 probably.

9 Q Over what period of time roughly?

10 A Probably September of '02 till June of
11 '03. I -- you know, I don't recall something being
12 done the last three months or so.

13 Q Can you put a number on how many times
14 a month you may have received a request, let's say, in
15 the last year? And we'll even put aside Mr. Pugliese's
16 requests about Mr. Kontyko. But how many times a month
17 do you get a request for a report to be run on another
18 salaried employee?

19 A Section supervisor in engineering --

20 Q We'll say -- I'm sorry. I just
21 interrupted you. Engineering, you seemed to indicate
22 that they just do that on a regular basis, right?

23 A No, I didn't say regular basis.

24 Q Or periodically?

25 A Periodically.

1 Q We'll put aside Mr. Pugliese's requests
2 on Mr. Kontyko and putting aside the requests for
3 engineering, which I guess engineering was every six
4 months; is that when you said they did it?

5 A I said periodically. I said it seems
6 like about every six months.

7 Q That's fine.

8 A Can I nail it down to September 1st and
9 March 1st? No.

10 Q You're right. Every six months, that's
11 fine. Putting that aside --

12 A No, I didn't say that. I said --

13 Q About every. I'm sorry, sir.

14 A Okay. Yeah.

15 Q And the record speaks for itself. If
16 I've mischaracterized what you said, you don't have to
17 worry about it. It's on the record.

18 Putting aside engineering and putting
19 aside Mr. Pugliese's requests for Mr. Kontyko, about
20 how many times a month in the past year do you get
21 these kind of requests?

22 A I'm trying to think of people right
23 now. I'd say maybe six maximum.

24 Q Six times a month?

25 A No, six times a year.

1 Q Okay. And just generally speaking, six
2 times a year would be the rough average over the last
3 four years?

4 A We haven't had the system for the last
5 four years.

6 Q So the first time that you had received
7 a request to check another salaried employee's time was
8 after this notice came out which was Exhibit 16?

9 A I would say so, yeah, because the old
10 Honeywell system, that was only for the administration
11 building and some other selected areas within the
12 administration building. I mean, as far as the hourly
13 gates and the main entrance by the security office,
14 there was no readers at all.

15 Q At this time, August 29th, 2001, when
16 there was this requirement for salaried employees to
17 swipe out as they exited the building, are you saying
18 at that same time there was additional readers set up
19 in different areas of the plant?

20 A Yeah. We put them on the gates, okay,
21 we put them at the security office, put them down by
22 the CVT garage, got a turnstile put in there. Let's
23 see, computer labs has always been the same. Training
24 facility, I cannot recall if the new training facility
25 had the old time reader or not. The -- what we used to

1 utilize as the old training center, there was one
2 there, an old -- you know, the old system. There's not
3 one of the new system. Engineering, we added one for
4 their engineering library. The main computer room, I
5 want to say we had three up there, quite -- you know,
6 quite possibly it could have been four with the old
7 system as well as the new system.

8 Q Before August 29th, 2001 employees did
9 have to engage a reader to enter the plant?

10 A No. The administration building.

11 Q Just to get into the administration
12 building?

13 A Yes.

14 Q So a typical, let's say, hourly
15 employee who gets out of his car and wants to get on
16 the plant floor before August 29th, 2001, was there any
17 sort of security checkpoint or anything?

18 A If you're asking me as head of
19 security, we had one gate manned at all times, and
20 that's our main office. What we call gate 10 and gate
21 11, no, there wasn't -- we had cameras there, okay, but
22 that was it.

23 Q But no electronic card reader?

24 A No. Huh-uh.

25 Q That's only been in the last --

1 A Before we put the system in. I don't
2 know if the date of this -- that you've got on here,
3 August 29th, I don't know if that's the date the system
4 went in or not. I want to think -- I want to think the
5 system was put in before that. In fact, I know it was,
6 yeah. I'm trying to think when this one guy retired
7 because he had the responsibility to get that system
8 put in. I think in September 2000, to the best of my
9 recollection, that's when the new system was put in.

10 Q The new system you're referring to is
11 an electronic card reader?

12 A The new Honeywell system.

13 Q So between September of 2000 and August
14 29th, 2001 there may have been some system in place
15 where people --

16 A No. Excuse me. When we put the new
17 system in, that's when we had the Honeywell reader,
18 okay, outside the gates, too.

19 Q Beginning in September 2000?

20 A Somewhere in there.

21 Q Okay. So as we've talked --

22 A Because I remember this one guy worked
23 for me and I told him he couldn't retire until he got
24 that system in and I think that was right around the
25 15th of September, 2000.

1 Q All right. So before August 29th, 2001
2 employees may have already been using an electronic
3 card reader to get in the building?

4 A Yeah, they were. They were.

5 Q But after that the salaried workforce
6 had to --

7 A Right.

8 Q -- engage the reader when they exited?

9 A Yes, yes.

10 Q And when you get these requests to run
11 these reports that we've been talking about for
12 salaried employees, you've got, I guess, eight people
13 working for you in that area?

14 A Excuse me?

15 Q You've got eight people working for you
16 as security guards?

17 A Yes.

18 Q And I guess when you get a request to
19 do a trail report, what I'll call a trail report, I
20 guess you go to whoever is available to run that report
21 for you?

22 A Most of the time it's the persons that
23 work on day shift because I'm primarily there during
24 all the day shift times.

25 Q And how many people are on day shift

1 that you would ask?

2 A Three.

3 Q Jeff Howard is one of them?

4 A Jeff Howard is one.

5 Q Who are the other two?

6 A Mike -- well, the way our shift is set
7 up right now, Mike Piccirillo, P-I-C-C-I-R-I-L-L-O,
8 he's on day shift, and a lady by the name of Candace
9 VanKueren, V-A-N, capital K-U-E-R-E-N.

10 Q Can somebody have one of those reports
11 run on a different employee if they don't go through
12 you first?

13 A I certainly don't want to think so, but
14 has it happened? It could have happened, but I doubt
15 it very much. Those guys are pretty good about not
16 doing things unless I go ahead and say so, other than
17 the supervisors going ahead and requesting their own
18 time for the pay periods, and I'm going to put a stop
19 to that.

20 Q So as far as you know, the requests
21 come through you to run these reports --

22 A On other people.

23 Q Yes, on other people. And when they
24 do, you go to one of the three people that's available
25 on day shift to run the report?

1 A Yes. That's where the system is, is
2 the security office.

3 MR. SIMON: All right. Off the record.

4 (OFF THE RECORD)

5 MR. SIMON: Back on the record.

6 BY MR. SIMON:

7 Q Mr. Robbins, the requests that you
8 receive from engineering for these reports, that's with
9 respect to salaried employees, right?

10 A Yes.

11 Q Do you receive these requests to run
12 these reports from human resources?

13 A I have before.

14 Q And who is your contact there for those
15 reports?

16 A On the salaried side is Herb Huebner.

17 Q Okay. Do you remember the last time --
18 well, let me make this qualification. I think in
19 connection with this lawsuit trail reports were run off
20 for each of my clients, all right, in the last several
21 months.

22 Putting that aside, can you remember
23 the last time Mr. Huebner requested that you run one of
24 these reports for a salaried employee?

25 A He never has.

1 Q He never has?

2 A Never has, other than that one.

3 Q That's the only time you were talking
4 about. Has Mr. Sennish ever made that request?

5 A No.

6 Q Has anyone else in human resources
7 asked you to run one of these reports with respect to
8 salaried employees?

9 A No.

10 Q Is human resources authorized to ask
11 one of your security guards to run a report without
12 your authorization?

13 A If I'm not there, yeah. I mean, I
14 would -- I would hope they would run it for Cyril
15 Puthoff or Len Sennish or Herb Huebner.

16 Q So if Mr. Puthoff calls Jeff Howard and
17 asks for a report, Mr. Howard is authorized to do that?

18 A On -- yeah, because he'd be -- he's the
19 labor relations manager. That's on the hourly side.

20 Q All right. Exhibit 16, do you see in
21 the third paragraph where it says "Please be
22 advised..."?

23 A Mm-hmm.

24 Q Just read those two sentences silently
25 to yourself and then I have a question about it.

1 A Okay. I read it.

2 Q Has anyone, anyone in the company,
3 explained to you that after this notice was sent out
4 that there was going to be a procedure where those
5 Honeywell readouts would be audited against the time
6 sheets from time to time? Did someone tell you that
7 was going to happen?

8 A No.

9 Q In fact, it has happened, based on what
10 you've described here, right?

11 A Yes.

12 Q Has anyone ever told you that there
13 might be certain consequences to the salaried employees
14 if they find there's discrepancies between the time
15 sheets and the Honeywell readout?

16 A No.

17 Q Have you had any kind of conversation
18 with anyone about any one of the salaried employees
19 after you've forwarded these reports to whether it be a
20 manager or someone in human resources?

21 A No. I make it a point not to ask any
22 questions.

23 MR. SIMON: Okay. I have no further
24 questions.

25 THE WITNESS: Okay.

1

MR. SIMON: Mr. Robbins, thank you.

- 0 -

(AND FURTHER THE DEPONENT SAITH NAUGHT)

- 0 -

Martin R. Robbins

C-E-R-T-I-F-I-C-A-T-I-O-N

STATE OF OHIO,

COUNTY OF HAMILTON, To-wit;

I, Susan K. Lee, CVR-CM, Court Reporter and Notary Public in and for the State of Ohio, do hereby certify;

That on the 3rd day of October, 2003, there appeared before me pursuant to Notice and agreement of counsel, **MARTIN R. ROBBINS**, as a witness in the previously entitled cause;

That the said witness was sworn by me and examined to tell the truth, the whole truth, and nothing but the truth in said cause;

That the deposition was taken by me via Stenomask and electronic recording and the foregoing 25 pages contain a true, full and correct transcription of all the testimony of said witness;

That the deposition was submitted to counsel for the witness for reading and signature;

That I am not related to or in any way associated with any of the parties to said cause of action, or their counsel, and that I am not interested in the event thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of October, 2003.

Susan K. Lee, CVR-CM
My commission expires:
August 30, 2004